

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

**File No. RH03032089
June 7, 2004**

NOTICE OF PROPOSED RULEMAKING AND NOTICE OF PUBLIC HEARING

SUBJECT: AUTOMOBILE INSURANCE FRAUD PROGRAM

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner of the State of California (Commissioner) proposes to amend and adopt the regulations as described below after considering comments from the public. The Commissioner proposes to amend Sections 2698.61 and 2698.62 of title 10, Chapter 5, Subchapter 9, Article 4 of the California Code of Regulations (CCR). The proposed amendments and additions govern the assessment for the funding of a grant program to fight the organized automobile insurance fraud.

PUBLIC HEARING

A public hearing has been scheduled in connection with this proposed action. A public hearing will be held:

Location: 300 Capitol Mall, 13th Floor Conference Room
Sacramento, CA 95814
Date: July 26, 2004.
Time: 10:00 A.M.

AUTHORITY AND REFERENCE

The Commissioner proposes to adopt, amend and repeal specified portions of the subject regulations under the authority of California Insurance Code (CIC) sections 12921, 12926. The Commissioner's decision on the proposed changes to the regulations will implement, interpret and make specific provisions of CIC section 1872.8.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on July 26, 2004. Please direct all written comments to the following contact person:

Wesley E. Kennedy
300 Capitol Mall, 17th Floor

Sacramento, CA 95814
(916) 492-3561

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

Gene Woo
45 Fremont Street, 24th Floor
San Francisco, 94105
(415) 538-4496

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for these hearings in order to make special arrangements, if necessary.

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, addressed to one of the contact person at his respective address listed above, no later than 5:00 p.m. on July 26, 2004. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: kennedyw@insurnace.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Wesley E. Kennedy and sent to the following facsimile number: (916) 324-1883. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

PUBLIC DISCUSSION OF PROPOSED REGULATIONS

Pursuant to Government Code section 11346.45, the California Department of Insurance (CDI) mailed an invitation to Pre-notice Public Workshop to a number of insurer-group representatives and also posted such notice on its public web-site. Subsequently, the CDI held a public discussion in order to receive comments about the proposed regulation. Input from the workshop participants was taken into account in the formulation of the proposed regulation.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable

advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of CCR, title 10, Chapter 5, Subchapter 4.5, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address in order to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

The Commissioner proposes to amend title 10, CCR, sections 2698.61 and 2698.62 regarding the calculation and collection of an assessment to fund a program for the investigation and prosecution of automobile insurance fraud. The proposed amendment will implement, interpret and make specific the provisions of the CIC section 1872.8 which, inter alia, require the Commissioner to assess and distribute certain funds to California district attorneys for the purpose of prosecuting automobile insurance fraud cases.

AB 1050, Chapter 885, Statutes of 1999, was signed by the Governor on October 9, 1999 creating the Organized Crime Prevention and Victim Protection Act of 1999 (the Act). AB 1050, inter alia, added CIC 1874.8 and 1874.81 as well as modifying existing CIC section 1872.8. In adopting AB 1050, the Legislature made the following findings and declaration of purpose:

Section 1. (a) This act shall be known as the Organized Crime Prevention and Victim Prevention Act of 1999.

“(b) The Legislature finds that organized automobile fraud activity operating in the major urban centers of the state represents a significant portion of all individual fraud-related automobile insurance cases. These cases result in artificially higher insurance premiums for core urban areas and low-income areas of the state than for other areas of the state. Only a focused, coordinated effort by all appropriate agencies and organizations can effectively deal with this problem.”

CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. CIC section 1872.8, requires the Commissioner to establish an annual assessment on each

vehicle for which a policy of insurance has been issued in this state in order to fund the activities under the Act by the Commissioner, the California Highway Patrol and county district attorney offices.

CIC section 1872.8 does not provide for a specific method for the calculation and payment of this assessment. Prior to November 12, 2001, the regulations implementing that section also did not provide a method for calculating and remitting the payment of the assessment. As a result of this lack of specificity, assessments were undertaken in a variety and often-inconsistent methods. In August, 2000, the Commissioner issued a notice of intent to adopt regulations to address this problem. As initially noticed, section 2698.62, required an annual assessment to be paid on a non-prorated quarterly basis where each insurer would calculate and pay a full assessment on each vehicle insured under a policy of insurance issued in this state during the proceeding quarter or any part thereof. As a result of comments received during the public comment period, the proposed text was amended to enable a limited amount of prorating in the calculation and payment of the assessment.

In addition, the CDI expressed its belief that the most accurate means of identifying vehicles for the purpose of calculating the assessment was to employ a vehicle specific or “hard count” method. However, in response to comments during pre-notice discussions some insurers indicated that undertaking a hard count may be difficult for some lines of insurance and that comparable surrogates could be employed. Accordingly, the extant regulations do not expressly mandate a “hard count. Although not expressly requiring the use of a hard count, at that time, the CDI did indicate that it would seek to promulgate further changes to the regulation to address this issue should it subsequently be deemed necessary.

After two and one-half years under the extant regulations, the Commissioner has determined that allowing the assessment to be calculated and paid on a prorated basis, especially in the absence of specific and uniform method for identifying the number of vehicles, has resulted in the use of methods in the calculating and remitting the assessment that are inconsistent, less accurate and raise difficulties in undertaken efficient verification. In addition, the result may have also contributed to a reduction in the appropriate total amount of the assessment. The Commissioner believes that insurers are readily capable of employing a hard count in nearly, if not all, lines of automobile insurance. That using a uniform method for counting vehicle would provide a clear and uniform standard for insurer and the CDI to use in calculating the assessment. Remitting the full annual assessment in the quarter each vehicle is initially identified would be a more clear, simpler and less confusing process. That by using a 12 month rather than a calendar or budget year, would preclude any ostensible inequity that could result from eliminating prorating. Providing a data file where the vehicle identification number and basic policy information is retained will provide an efficient calculation and payment of the assessment as well as enhance the ability to verify the accuracy of the same by the Department. Finally, the proposed amendments will provide insurers an option to use an alternative method subject to prior approval by the Commissioner.

Accordingly, the proposed amendments will modify the method for calculating the annual assessment by eliminating the text allowing for prorating in the calculation and payment of the assessment, make more specific that the calculation must be based on a hard count of the vehicles by using a vehicle specific identification number and verification thereof. A related but distinct provision for the assessment of \$.50 is set forth in title 10, California Code of Regulations, section 2698.71 as well as a \$.30 assessment provided for under 10 California Code of Regulations, section 2698.68. Conforming amendments are being proposed concurrently with this submission.

Summary of Proposed Provisions

Section 2698.61

Adds a definition for the terms “in force” and “vehicle identification number” and makes appropriate adjustment to the existing definitions for the insertion of the added provisions.

Section 2698.62

The proposed amendments to subsection (a) deletes the provisions of the existing text providing that the amount, calculation and remittance of the assessment may be undertaken on an annualized and prorated basis. The proposed amendment further specifies that assessment may not be prorated either in amount assessed or remitted.

Deletes provisions of the existing subsection (b) that provide a method for the calculation of the assessment on a prorated basis. Adds text to subsection that provides a method for the calculation and remittance of the assessment on a quarterly but non-prorated basis. Further adds to existing provision that insurer’s will certify that they have calculated the assessment in conformity with the provisions of this section.

Renumbers existing subsection (c) to subsection (d). As proposed, subsection (c) adds text requiring insurers to maintain, in an identified data file, information necessary for the verification of assessment calculation, which shall include the vehicle identification number, policy number and dates of coverage for each vehicle insured in this state. .

Renumbers existing subsections (d) to subsection (e). Adds to renumbered subsection (d) in the first sentence the term “separate” and adds a item (d) which provides for an exclusion from assessment for vehicles on which a policy has been written but never put in force (i.e., a “flat cancellation”). Renumbers existing subsection (e) to subsection (f).

MATERIAL INCORPORATED BY REFERENCE

No material has been incorporated by reference in the proposed regulations.

DETERMINATIONS

BUSINESS REPORTS

To the extent that any provision of the proposed regulations could be interpreted as requiring a report of business, the Commissioner finds that the application of these regulations to business necessary in the public health, safety, or welfare of the people of the state.

EFFECT ON SMALL BUSINESSES

The proposed regulation will not have an adverse effect on small businesses. This section pertains to the methodology for the calculation and payment of an assessment by insurance companies (Govt. Code 11342.610(b)(2).)

IMPACT ON BUSINESSES AND JOBS

The Commissioner has determined that the regulations would not have a significant statewide adverse economic impact on directly affecting businesses, including the ability of California businesses to compete with the businesses in other states.

The Commissioner has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently within the State of California.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner must determine the potential impact of the proposed action on private persons or businesses directly affected by the proposal. The proposed regulations are not expected to have a significant cost impact on private persons or businesses directly affected. The cost imposed on the businesses directly affected, insurers, is one-dollar (\$1.00) per policy per year and costs associated with the calculation and transmittal of this assessment and are imposed by existing statute and regulation. .

IMPACT ON HOUSING

The matters proposed herein will not affect housing costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The CDI has determined that there will be no cost savings or increase, nor will these regulations impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13) the Commissioner must determine that no alternative considered by the CDI would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action. These regulations are to implement, interpret and make specific a statutorily prescribed program. No alternatives were considered.

FEDERAL FUNDING

The matters proposed herein will not affect federal funding.

NON-DISCRETIONARY COST OR SAVING

The matters proposed will not impose any non-discretionary cost or savings to local agencies.

COSTS AND SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to state agencies.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Commissioner prior to the public hearing on the proposed regulations. Written comments transmitted via facsimile machine will not be accepted. Comments should be sent to the agency contact person:

Department of Insurance
Attn: Wesley E. Kennedy
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

All interested persons may present oral/or written testimony at the scheduled public hearing.

ACCESS TO PROPOSED REGULATIONS; STATEMENT OF REASONS AND RULEMAKING FILE

The CDI has prepared an initial statement of reasons that sets forth the reasons for the proposed adoption of the regulations. On request, the initial statement of reasons, including the text of the regulations and any supplemental information contained in the rulemaking

file will be made available to the public. The final statement of reasons will be made available once it has been prepared and will also be available on the CDI website.

The rulemaking file will be made available for inspection, by appointment, at 300 Capitol Mall, 17th Floor, Sacramento, California, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted. Requests for copies of the text of the regulation, initial statement of reasons, final statement of reasons, review of the rulemaking file or questions regarding these proceedings should be directed to the contact person listed above.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the CDI's website. To access them, go to <http://www.insurance.ca.gov/docs/index.html>. Near the right side of the page under "Quick Links" go to the bottom of the list and click on "Legal Information." On the next page, click on "Proposed Regulations" In this section, scroll down until you see the subheading " Search." Enter RH03032089 (the Department's regulation file number for these regulations) in the "Search for" field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "1872.8"), or search by key words ("assessment " for example). Then, click on the "Submit" button to display links to the various filing documents."

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "organized automobile fraud assessment" link, and click it. Links to the documents associated with these regulations will then be displayed.

AUTOMATIC MAILING

A copy of this notice, including the Informative Digest, containing the substance of the proposed regulations will automatically be sent all persons on the Insurance Commissioner's mailing list.

ADOPTION OF REGULATION

Following the close of the comment period and any hearing, the Commissioner may adopt the regulation substantially as described in this notice and Informative Digest. Copies of the regulations, as adopted, will be sent to all persons on the Commissioner's interested parties mailing list and to all person who provided comment during the comment period or at any public hearing, and those persons who have requested copies of information regarding the regulations.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

AVAILABILITY OF ADDITIONAL STATEMENTS AND COMMENTS

As a result of public comment (oral or written) the Commissioner may determine that changes to the proposed regulations are appropriate. If those changes are sufficiently related to the original text the public was originally noticed of in the proposed regulatory action, copies of the revised proposed regulations will be sent to all persons who testified at the public hearing or submitted comments during the comment period or at the public hearing, and those persons who have requested copies of information regarding the regulation. The full text of the changed regulations will be available for at least 15 days prior to the date on which the agency adopts, amends or repeals the resulting regulations. At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was not adequately placed on notice that the changed action could result from the originally proposed action. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above. If adopted these regulations will appear in title 10, Chapter 5, Subchapter 9, Article 4.5, Sections 2698.62, CCR